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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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YOUNG & THOMPSON			BUTCHER, BRIAN M	
209 Madison Street				
Suite 500			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			2627	
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			10/28/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/577,773	KURODA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRIAN BUTCHER	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 April 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 11-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 28 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities: On **page 20, line 18, "FIG. 8"** appears to need a change to "**FIG. 9**". Appropriate correction is required.

The disclosure is objected to because of the following informalities: On **page 21, line 1, "an information recording apparatus 200"** appears to need a change to "**an information recording apparatus 1**". Appropriate correction is required.

The disclosure is objected to because of the following informalities: On **page 23, line 22, "the DVD modulator 508"** appears to need a change to "**the DVD modulator 506**". Appropriate correction is required.

The disclosure is objected to because of the following informalities: On **page 32, line 18, "the head amplifier 530"** appears to need a change to "**the head amplifier 503**". Appropriate correction is required.

The disclosure is objected to because of the following informalities: On **page 35, line 23, "the CPU 550"** appears to need a change to "**the CPU 560**". Appropriate correction is required.

The disclosure is objected to because of the following informalities: On **page 36, line 19, "the step S204; Yes"** appears to need a change to "**the step S204: No**". Appropriate correction is required.

The disclosure is objected to because of the following informalities: On **page 45, line 17, "recording area 114"** appears to need a change to "**recording area 116**". Appropriate correction is required.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **On page 21, line 2, the description mentions the reference numeral "502" in relation to "a spindle motor". Figure 2 does not include the reference numeral "502".** Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any

required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 20** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 20 is drawn to a computer program product stored on a computer readable medium, where the computer program product as defined in the specification on page 19, line 5 can be a carrier wave; therefore, fails to fall within a statutory category of invention.

A claim directed to a computer program product stored on computer readable medium, where the computer program product as defined in the specification can be a signal or carrier wave or paper, covers a signal or carrier wave or paper which are non-statutory as noted, *infra*.

A claim directed to a computer program itself or signal or carrier wave is non-statutory because it is not:

A process occurring as a result of executing the program, or

A machine programmed to operate in accordance with the program, or

A manufacture structurally and functionally interconnected with the program in a manner which enable the program to act as a computer component

and realize its functionality, or

A composition of matter.

A claim directed to a paper having thereon a computer program is non-statutory, because it covers printed matter which is non-statutory. It is not until the program is converted into an electronic form to be read and executed by the processor that it becomes functional descriptive material. There is no functional relationship between the paper and the computer program (see *In re Gulack*, 217 USPQ 401, *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed.Cir.1994)). The program as disclosed is merely printed on the paper, hence the program is merely non-functional descriptive material, therefor, the claimed paper with a computer program printed on it is non-statutory. See *Ex parte S*, 25 JPOS 904, *Ex parte Glenn*, 155 USPQ 42, *In re Lockert*, 65 F.2d 159, 17 USPQ 515.

See MPEP § 2106.01. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is

thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 11 – 12, 14 – 17, and 19 - 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kihara et al. (Japanese Patent Application Publication JP 2001-014812), hereinafter referenced as Kihara, in view of Iwasaki et al. (United States Patent US 5,748,590), hereinafter referenced as Iwasaki.

Regarding **claim 11**, Kihara discloses a record/playback device that reads on the information recording apparatus claimed. Kihara discloses “a recording device for recording information onto an information recording medium” (paragraph [0001] ‘suitable recording device’) , “a detrack detecting device for

detecting occurrence of detrack during the recording of the information" (paragraph [0028] 'A distinction means to distinguish the existence of generating of change of [track] on the disk'), "a controlling device for controlling said recording device to return to a location where the detrack has occurred and restart the recording if the occurrence of the detrack is detected" (paragraph [0034] 'the whole operation is managed by the system controller 17 according [this equipment] to a microcomputer (CPU) for example' and paragraph [0028] 'it has the control means which resumes record based on the address held at the address maintenance means'), "a first judging device for judging whether or not the information already recorded in an area of a detrack destination can be reproduced, in the case in which the occurrence of the detrack is detected and the information is already recorded in the area of the detrack destination into which said recording device incorrectly records" (paragraph [0028] 'Re-record is performed from the digital signal as which generating of the error was detected when it was judged that the error has occurred in the digital signal recorded with the error detection means. When it is judged that the error has not occurred in the digital signal recorded with the error detection means, it has the control means which resumes record based on the address held at the address maintenance means'). However, Kihara fails to disclose "a second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records". The examiner

maintains that it was well known in the art for the record/playback device disclosed in Kihara to include "a second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records", as taught by Iwasaki.

In a similar field of endeavor Iwasaki discloses a disc inspecting device that determines whether or not data in a sector can be corrected (column 6, lines 20 – 25, and figure 5 step SP6) which reads on "a second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records" claimed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Iwasaki to include "a second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records" because one having ordinary skill in the art would want to determine if data that is not reproducible can be made reproducible through a corrective measure.

Regarding **claim 12**, Kihara and Iwasaki, hereinafter referenced as KI, disclose everything claimed as applied above (see claim 11), in addition KI disclose that the "information recording apparatus further comprises a buffer of predetermined size for buffering the information and supplying it to said recording device" and the "controlling device controls said buffer and said recording device to restart the recording from a location where the recording is to be restarted with using the information stored in said buffer". Specifically, Kihara discloses a memory means that accumulates a digital signal while recording (paragraph [0105] 'memory means') which reads on the "information recording apparatus further comprises a buffer of predetermined size for buffering the information and supplying it to said recording device" . In addition, Kihara discloses a controller that operates the memory means and recording device (paragraph [0034] 'the whole operation is managed by the system controller 17 according [this equipment] to a microcomputer (CPU) for example' and paragraph [0028] 'it has the control means which resumes record based on the address held at the address maintenance means') which reads on the "controlling device controls said buffer and said recording device to restart the recording from a location where the recording is to be restarted with using the information stored in said buffer".

Regarding **claim 14**, KI disclose everything claimed as applied above (see claim 11), in addition KI disclose that the "controlling device controls said recording device to return to the location where the detrack has occurred and restart the recording is such a condition that it is judged that the information can

be reproduced or that the error correction can be performed". Specifically, Kihara discloses that when it is judged that the error has not occurred in a recorded digital signal, recording is resumed via a stored address and the restoration of recording is performed (paragraph [0111] 'error has not occurred in a recorded digital signal' 'resuming record based on the held address') which reads on the "controlling device controls said recording device to return to the location where the detrack has occurred and restart the recording is such a condition that it is judged that the information can be reproduced or that the error correction can be performed" claimed because a digital signal recorded without error is a reproducible signal.

Regarding **claim 15**, KI disclose everything claimed as applied above (see claim 11), in addition KI disclose that the "controlling device controls said recording device to register the area of the detrack destination, as an unallocated area, and to return to the location where the detrack has occurred and to restart the recording if it is judged that information cannot be reproduced or that the error correction cannot be performed". Specifically, Iwasaki discloses a disc inspecting device that performs a process of registering a data sector as a defective sector when an error that is not correctable has occurred (column 6, lines 20 – 25, lines 45 – 50, and figure 5 item SP6 SP10) which reads on the "controlling device controls said recording device to register the area of the detrack destination, as an unallocated area, and to return to the location where the detrack has occurred and to restart the recording if it is judged that information cannot be reproduced or that the error correction cannot be

performed" claimed because a data sector having a non correctable error is registered as a defective sector or otherwise an unallocated area.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Iwasaki to include "controlling device controls said recording device to register the area of the detrack destination, as an unallocated area, and to return to the location where the detrack has occurred and to restart the recording if it is judged that information cannot be reproduced or that the error correction cannot be performed" because one having ordinary skill in the art would want to maintain a listing of defective or unallocated areas of a disk in order to perform playback.

Regarding **claim 16**, KI disclose everything claimed as applied above (see claim 11), in addition KI disclose that the "controlling device controls said recording device to further register the area of the detrack destination incorrectly recorded, as a caution area if it is judged that information can be reproduced or that the error correction can be performed". Specifically, Iwasaki discloses a disc inspecting device that performs a process of registering a data sector as a defective sector when an error that is not correctable has occurred (column 6, lines 20 – 25, lines 45 – 50, and figure 5 item SP6 SP10). In addition, when an error is found to be correctable, the sector goes through steps SP7, SP8, and SP9 to further determine if the sector should be registered as defective. (figure 5) This further testing or processing of the data sector after it has been determined to be error correctable reads on the "controlling device controls said recording

device to further register the area of the detrack destination incorrectly recorded, as a caution area if it is judged that information can be reproduced or that the error correction can be performed" claimed because a data sector having a correctable error is put through a set of precautionary tests to further determine if should be registered as a precautionary defective sector or otherwise a caution area.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Iwasaki to include "controlling device controls said recording device to further register the area of the detrack destination incorrectly recorded, as a caution area if it is judged that information can be reproduced or that the error correction can be performed" because one having ordinary skill in the art would recognize that the additional processing provided by steps SP7, SP8, and SP9 further identifies a data sector as a problem area or caution area when the sector has already been found error correctable.

Regarding **claim 17**, KI disclose everything claimed as applied above (see claim 11), in addition KI disclose that the "controlling device controls said recording device to register the caution area as an unallocated area if the area of the detrack destination is the caution area". Specifically, Iwasaki discloses a disc inspecting device that performs a process of registering a data sector as a defective sector when an error that is not correctable has occurred (column 6, lines 20 – 25, lines 45 – 50, and figure 5 item SP6 SP10). In addition, when an

error is found to be correctable, the sector goes through steps SP7, SP8, and SP9 to further determine if the sector should be registered as defective. (figure 5) This further precautionary testing or processing of the data sector after it has been determined to be error correctable and registering of the sector as defective reads on the "controlling device controls said recording device to register the caution area as an unallocated area if the area of the detrack destination is the caution area " claimed because a data sector having a correctable error is put through a set of precautionary tests to further determine if should be registered as a precautionary defective sector or otherwise a caution area. The additional precautionary tests lead to the registering of the error correctable sector as an unallocated or defective area.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Iwasaki to include "controlling device controls said recording device to further register the area of the detrack destination incorrectly recorded, as a caution area if it is judged that information can be reproduced or that the error correction can be performed" because one having ordinary skill in the art would recognize that the additional processing provided by steps SP7, SP8, and SP9 further identifies a data sector as a problem area or caution area when the sector has already been found error correctable.

Regarding **claim 19**, Kihara discloses a record method that reads on the information recording method claimed. Kihara discloses "a recording process of

recording information onto an information recording medium" (paragraph [0028] 'to record on a disk using a recording head') , "a detrack detecting process of detecting occurrence of detrack during the recording of the information" (paragraph [0028] 'to distinguish the existence of generating of change of [track] on the disk'), "a controlling process of controlling said recording device to return to a location where the detrack has occurred and restart the recording if the occurrence of the detrack is detected" (paragraph [0034] 'the whole operation is managed by the system controller 17 according [this equipment] to a microcomputer (CPU) for example' and paragraph [0028] 'it has the control means which resumes record based on the address held at the address maintenance means'), "a first judging process of judging whether or not the information already recorded in an area of a detrack destination can be reproduced, in the case in which the occurrence of the detrack is detected and the information is already recorded in the area of the detrack destination into which said recording device incorrectly records" (paragraph [0028] 'Re-record is performed from the digital signal as which generating of the error was detected when it was judged that the error has occurred in the digital signal recorded with the error detection means. When it is judged that the error has not occurred in the digital signal recorded with the error detection means, it has the control means which resumes record based on the address held at the address maintenance means'). However, Kihara fails to disclose "a second judging process of judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the

detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records". The examiner maintains that it was well known in the art for the record method disclosed in Kihara to include "a second judging process of judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records", as taught by Iwasaki.

In a similar field of endeavor Iwasaki discloses a disc inspection procedure that determines whether or not data in a sector can be corrected (column 6, lines 20 – 25, and figure 5 step SP6) which reads on "a second judging process of judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records" claimed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record method of Kihara by specifically using the teachings in Iwasaki to include "a second judging process of judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records" because one

having ordinary skill in the art would want to determine if data that is not reproducible can be made reproducible through a corrective measure.

Regarding **claim 20**, Kihara discloses a record/playback device that reads on the computer program product claimed. Kihara discloses "A computer program product in a computer-readable medium for record control and for tangibly embodying a program of instruction executable by a computer provided for the information recording apparatus, said computer program product making the computer function as at least one portion of a recording device, a detrack detecting device, a controlling device and a second judging device" (paragraph [0034] 'the whole operation is managed by the system controller 17 according [this equipment] to a microcomputer (CPU) for example' The microcomputer disclosed by Kihara is known to operate via a computer program that is stored on either internal or external memory.) Kihara discloses a "recording device for recording information onto an information recording medium" (paragraph [0001] 'suitable recording device') , a "detrack detecting device for detecting occurrence of detrack during the recording of the information" (paragraph [0028] 'A distinction means to distinguish the existence of generating of change of [track] on the disk'), a "controlling device for controlling said recording device to return to a location where the detrack has occurred and restart the recording if the occurrence of the detrack is detected" (paragraph [0034] 'the whole operation is managed by the system controller 17 according [this equipment] to a microcomputer (CPU) for example' and paragraph [0028] 'it has the control means which resumes record based on the address held at the address

maintenance means'), a "first judging device for judging whether or not the information already recorded in an area of a detrack destination can be reproduced, in the case in which the occurrence of the detrack is detected and the information is already recorded in the area of the detrack destination into which said recording device incorrectly records" (paragraph [0028] 'Re-record is performed from the digital signal as which generating of the error was detected when it was judged that the error has occurred in the digital signal recorded with the error detection means. When it is judged that the error has not occurred in the digital signal recorded with the error detection means, it has the control means which resumes record based on the address held at the address maintenance means'). However, Kihara fails to disclose a "second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records". The examiner maintains that it was well known in the art for the record/playback device disclosed in Kihara to include a "second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records", as taught by Iwasaki.

In a similar field of endeavor Iwasaki discloses a disc inspecting device that determines whether or not data in a sector can be corrected and operates

via a controller (column 6, lines 20 – 25, and figure 5 step SP6) which reads on a “second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records” claimed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Iwasaki to include “a second judging device for judging whether or not error correction can be performed with respect to the area of the detrack destination, in the case in which the occurrence of the detrack is detected and the information is unrecorded in the area of the detrack destination into which said recording device incorrectly records” because one having ordinary skill in the art would want to determine if data that is not reproducible can be made reproducible through a corrective measure.

**Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kihara, in view of Iwasaki, and further in view of Ueki (United States Patent US 6,678,236), hereinafter referenced as Ueki.

Regarding **claim 13**, KI disclose everything claimed as applied above (see claim 12), however KI fail to disclose that "the predetermined size is equal to or greater than an error-correctable minimum unit". The examiner maintains that it was well known in the art for the record/playback device disclosed in Kihara to

include "the predetermined size [being] equal to or greater than an error-correctable minimum unit ", as taught by Tanaka

In a similar field of endeavor Tanaka discloses that one ECC block is a minimum unit of recording and reproducing data (column 26, lines 16 – 18) which reads on "the predetermined size is equal to or greater than an error-correctable minimum unit" claimed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Tanaka to include "the predetermined size is equal to or greater than an error-correctable minimum unit " because one having ordinary skill in the art would recognize that buffer must store data which has undergone error correction in the minimal amount of one ECC block.

**Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kihara, in view of Iwasaki, and further in view of Kojima et al. (Japanese Patent Application Publication JP 2002-279649), hereinafter referenced as Kojima.

Regarding **claim 18**, KI disclose everything claimed as applied above (see claim 11), however KI fail to disclose that the "controlling device controls said recording device to register an area in another layer corresponding to the area of a detrack destination in one layer incorrectly recorded, as an allocated area, when the information recording medium is an information recording medium having a multiple recording layer". The examiner maintains that it was well known in the art for the record/playback device disclosed in Kihara to include the

"controlling device [controlling] said recording device to register an area in another layer corresponding to the area of a detrack destination in one layer incorrectly recorded, as an allocated area, when the information recording medium is an information recording medium having a multiple recording layers", as taught by Kojima

In a similar field of endeavor Kojima discloses that a track jump in a two-layer disk can result in data previously recorded in a layer which is not presently being recorded can be destroyed when a jump occurs from the layer being currently recorded (paragraph [0070] 'if it is a recorded [track], the data currently recorded correctly will be destroyed) which reads on the "controlling device [controlling] said recording device to register an area in another layer corresponding to the area of a detrack destination in one layer incorrectly recorded, as an allocated area, when the information recording medium is an information recording medium having a multiple recording layers" claimed because the it is evident that the area in layer which is not presently being recorded is affected when a detrack occurs from a layer being currently recorded.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the record/playback device of Kihara by specifically using the teachings in Kojima to include "controlling device [controlling] said recording device to register an area in another layer corresponding to the area of a detrack destination in one layer incorrectly recorded, as an allocated area, when the information recording medium is an information recording medium having a multiple recording layers" because one

having ordinary skill in the art would recognize that both areas must be registered to maintain a listing of defective or unallocated areas per each layer of a disk in order to perform playback of the entire disc.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN BUTCHER whose telephone number is (571)270-5575. The examiner can normally be reached on Monday – Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young, can be reached at (571) 272 - 7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BMB  
October 21, 2008

/Wayne Young/  
Supervisory Patent Examiner, Art Unit 2627